

AMENDED IN ASSEMBLY MAY 16, 1996
AMENDED IN ASSEMBLY APRIL 18, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3081

Introduced by Assembly Member Olberg

February 23, 1996

An act to amend Sections 66000, 66001, and 66020 of the Government Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 3081, as amended, Olberg. Real property: fees for development.

Existing law imposes various requirements with respect to fees exacted in connection with land development approvals by public agencies. Existing law defines the term “fee” as a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

This bill would revise that definition to state that a fee means a monetary exaction, other than a tax or special assessment, whether imposed on a broad class of projects by legislation of general applicability or on a specific project or individual on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a

portion of the cost of public facilities, the need for which is caused in some part by the development project.

~~Existing law defines the term “public facilities” in connection with provisions relating to the imposition of fees for development to include public improvements, public services, and community amenities.~~

~~This bill would expand that definition to include any other measures designed to mitigate expected impacts of a development project.~~

Under existing law, in any action imposing a fee as a condition of approval of a development project by a local agency, the local agency is required to determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

This bill, instead, would require the local agency to determine that the fee is roughly proportional to the cost of the public facility. The bill also would add to these provisions that a discontinuance of a use of private property, or a change in its designation for zoning or planning purposes, does not deprive the public of a benefit, cause the need for public facilities, or otherwise justify the imposition of a fee. The bill would provide that this provision is not intended to prevent a local agency from charging a fee under specified provisions for the actual cost to administer the processing of an application.

Existing law permits any party to protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by (a) making payment in full or ensuring performance of the necessary conditions, and (b) serving a notice containing specified information, including a statement that the required payment is tendered under protest.

This bill, instead, would require the party protesting the imposition of an exaction to make payment in full only when due and the required statement would be revised to indicate that the required payment will be tendered under protest when due.

Under existing law, a protest filed against the imposition of any fees, dedications, reservations, or other exactions imposed



on a residential housing development is required to be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition thereof. Existing law also provides that any party who files a protest pursuant to these provisions may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition.

This bill, instead, would require a protest to be filed at or before payment of the fee or performance of the fee, dedication, reservation, or other exaction imposed on a residential housing development that is the subject of the protest. The bill also would require that an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency be filed within 180 days after the date of payment of the fee or performance of the dedication, reservation, or other exaction.

Under existing law, approval or conditional approval of a development occurs, for the purposes of these protest requirements, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required. Additionally, under existing law, the imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of these provisions, when they are imposed or levied on a specific development.

This bill would delete these provisions.

This bill also would expand these protest provisions to apply not only to residential housing developments but to any project undertaken for the purpose of development, as defined under existing provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66000 of the Government Code
2 is amended to read:

1 66000. As used in this chapter:

2 (a) “Development project” means any project
3 undertaken for the purpose of development.
4 “Development project” includes a project involving the
5 issuance of a permit for construction or reconstruction,
6 but not a permit to operate.

7 (b) “Fee” means a monetary exaction other than a tax
8 or special assessment, whether imposed on a broad class
9 of projects by legislation of general applicability or on a
10 specific project or individual on an ad hoc basis, that is
11 charged by a local agency to the applicant in connection
12 with approval of a development project for the purpose
13 of defraying all or a portion of the cost of public facilities
14 the need for which is caused in some part by the
15 development project, but does not include fees specified
16 in Section 66477, fees for processing applications for
17 governmental regulatory actions or approvals, fees
18 collected under development agreements adopted
19 pursuant to Article 2.5 (commencing with Section 65864)
20 of Chapter 4, or fees collected pursuant to agreements
21 with redevelopment agencies which provide for the
22 redevelopment of property in furtherance or for the
23 benefit of a redevelopment project for which a
24 redevelopment plan has been adopted pursuant to the
25 Community Redevelopment Law (Part 1 (commencing
26 with Section 33000) of Division 24 of the Health and
27 Safety Code.

28 (c) “Local agency” means a county, city, whether
29 general law or chartered, city and county, school district,
30 special district, authority, agency, any other municipal
31 public corporation or district, or other political
32 subdivision of the state.

33 (d) “Public facilities” includes public improvements,
34 public services; *and* community amenities, ~~or any other~~
35 ~~measures designed to mitigate expected impacts of a~~
36 ~~development project.~~

37 SEC. 2. Section 66001 of the Government Code is
38 amended to read:

39 66001. (a) In any action establishing, increasing, or
40 imposing a fee as a condition of approval of a

development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine that the amount of the fee is roughly proportional to the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) A discontinuance of a use of private property, or a change in its designation for zoning or planning purposes, does not deprive the public of a benefit, cause the need for public facilities, or otherwise justify the imposition of a fee. Nothing in this paragraph is intended to prevent a local agency from charging a fee under Section 65909.5 for the actual cost to administer the processing of an application.

(d) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(e) The local agency shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate

1 a reasonable relationship between the fee and the
2 purpose for which it was charged. The findings required
3 by this subdivision need only be made for moneys in the
4 possession of the local agency and need not be made with
5 respect to letters of credit, bonds, or other instruments
6 taken to secure payment of the fee at a future date.

7 (f) Except as provided in subdivision (f), the local
8 agency shall refund to the ~~then-current~~ *then-current*
9 record owner or owners of lots or units of the
10 development project or projects on a prorated basis the
11 unexpended or uncommitted portion of the fee, and any
12 interest accrued thereon, for which need cannot be
13 demonstrated pursuant to subdivision (d). A local agency
14 may refund the unexpended or uncommitted revenues
15 by direct payment, by providing a temporary suspension
16 of fees, or by any other means consistent with the intent
17 of this section. The determination by the governing body
18 of the local agency of the means by which those revenues
19 are to be refunded is a legislative act.

20 (g) If the administrative costs of refunding
21 unexpended or uncommitted revenues pursuant to
22 subdivision (e) exceed the amount to be refunded, the
23 local agency, after a public hearing, notice of which has
24 been published pursuant to Section 6061 and posted in
25 three prominent places within the area of the
26 development project, may determine that the revenues
27 shall be allocated for some other purpose for which fees
28 are collected subject to this chapter and which serves the
29 project on which the fee was originally imposed.

30 SEC. 3. Section 66020 of the Government Code is
31 amended to read:

32 66020. (a) Any party may protest the imposition of
33 any fees, dedications, reservations, or other exactions
34 imposed on a development project, as defined in Section
35 66000, by a local agency by meeting both of the following
36 requirements:

37 (1) Tendering any required payment in full when due
38 or providing satisfactory evidence of arrangements to
39 ensure performance of the conditions necessary to meet
40 the requirements of the imposition.

1 (2) Serving written notice on the governing body of
2 the entity, which notice shall contain all of the following
3 information:

4 (A) A statement that the required payment is
5 tendered or will be tendered when due, or that any
6 conditions which have been imposed are provided for or
7 satisfied, under protest.

8 (B) A statement informing the governing body of the
9 factual elements of the dispute and the legal theory
10 forming the basis for the protest.

11 (b) Compliance by any party with subdivision (a) shall
12 not be the basis for a local agency to withhold approval of
13 any map, plan, permit, zone change, license, or other
14 form of permission, or concurrence, whether
15 discretionary, ministerial, or otherwise, incident to, or
16 necessary for, the development project. This section does
17 not limit the ability of a local agency to ensure compliance
18 with all applicable provisions of law in determining
19 whether or not to approve or disapprove a development
20 project.

21 (c) Where a reviewing local agency makes proper and
22 valid findings that the construction of certain public
23 improvements or facilities, the need for which is directly
24 attributable to the proposed development, is required for
25 reasons related to the public health, safety, and welfare,
26 and elects to impose a requirement for construction of
27 those improvements or facilities as a condition of
28 approval of the proposed development, then in the event
29 a protest is lodged pursuant to this section, that approval
30 shall be suspended pending withdrawal of the protest, the
31 expiration of the limitation period of subdivision (d)
32 without the filing of an action, or resolution of any action
33 filed. This subdivision confers no new or independent
34 authority for imposing fees, dedications, reservations, or
35 other exactions not presently governed by other law.

36 (d) A protest filed pursuant to subdivision (a) shall be
37 filed at or before payment of the fee or performance of
38 the dedication, reservation, or other exaction that is the
39 subject of the protest. Any party who files a protest
40 pursuant to subdivision (a) may file an action to attack,

1 review, set aside, void, or annul the imposition of the fees,
2 dedications, reservations, or other exactions imposed on
3 a development project by a local agency within 180 days
4 after the date of the payment of the fee or performance
5 of the dedication, reservation, or other exaction that is the
6 subject of the protest. Thereafter, notwithstanding any
7 other law to the contrary, all persons are barred from any
8 action or proceeding or any defense of invalidity or
9 unreasonableness of the imposition. Any proceeding
10 brought pursuant to this subdivision shall take
11 precedence over all matters of the calendar of the court
12 except criminal, probate, eminent domain, forcible entry,
13 and unlawful detainer proceedings.

14 (e) If the court finds in favor of the plaintiff in any
15 action or proceeding brought pursuant to subdivision (d),
16 the court shall direct the local agency to refund the
17 unlawful portion of the payment, with interest at the rate
18 of 8 percent per annum, or return the unlawful portion
19 of the exaction imposed.

20 (f) (1) If the court grants a judgment to a plaintiff
21 invalidating, as enacted, all or a portion of an ordinance
22 or resolution enacting a fee, dedication, reservation, or
23 other exaction, the court shall direct the local agency to
24 refund the unlawful portion of the payment, plus interest
25 at an annual rate equal to the average rate accrued by the
26 Pooled Money Investment Account during the time
27 elapsed since the payment occurred, or to return the
28 unlawful portion of the exaction imposed.

29 (2) If an action is filed within 120 days of the date at
30 which an ordinance or resolution to establish or modify a
31 fee, dedication, reservation, or other exactions to be
32 imposed on a development project takes effect, the
33 portion of the payment or exaction invalidated shall also
34 be returned to any other person who, under protest
35 pursuant to this section and under that invalid portion of
36 that same ordinance or resolution as enacted, tendered
37 the payment or provided for or satisfied the exaction
38 during the period from 90 days prior to the date of the
39 filing of the action which invalidates the payment or

1 exaction to the date of the entry of the judgment
2 referenced in paragraph (1).

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